

Before April 15, specifically in January and February (or early March) 1986, Rabbitt visited the Deer Creek mine (Tr. 102). The company had requested, under § 101(c), <sup>10/</sup>a modification to use a two-entry longwall mining system. Rabbitt was directed by his superior in Washington, D.C. to investigate the matter and report back to him (Tr. 102, 103, 124). On the first occasion he was underground for five hours. He met with Earl White and persons in the safety department. He also met with the superintendent and persons in the engineering department (Tr. 103, 124). On the second occasion he was underground nine hours. He entered various areas of the Deer Creek mine as a result of this investigation (Tr. 103, 124). The Union opposed the petitions for modification that Emery had filed at the Cottonwood as well as the Deer Creek mines (Tr. 103). In October 1985 Rabbitt had done a similar investigation at the Deer Creek mine. On those occasions, before April 15, there was no discussion about Rabbitt's ability to conduct such investigations or to enter the property (Tr. 104).

Rabbitt believes his right of entry under § 103(f) can be conditioned on reasonable restrictions such as eye protection requirements (Tr. 135, 136). He didn't feel the hazard training checklist on Emery's release form was necessary (Tr. 136; Contestant Ex. 3).

Joseph Main testified that he is the administrator of the Department of Occupational Safety and Health for UMWA (Tr. 152). Thirty-five members of his staff of 40 are trained, experienced and educated international health and safety representatives who basically represent the UMWA members on health and safety matters. Their duties include conducting inspections at the mines, assisting plan approvals, processing petitions for modifications filed by the operator, providing assistance to local unions and guidance to the local safety committees (Tr. 154, 155). They also investigate mine disasters, injuries and accidents that occur (Tr. 154). The local union safety committee is comprised of miners employed full time at the mine site. The local members serve in an extra capacity as a representative (Tr. 155). The background educational level of the local mine committee is less than the health and safety representatives on the UMWA staff (Tr. 155).

Main estimates that the UMWA staff is in the field on a daily basis in some type of § 103(f) activity. There are numerous events which trigger a participation with an MSHA inspection. These include investigations of an accident, injury or an explosion, a regular inspection, or an inspection made for some special problem. In addition, participation may occur where the mine operator wishes to modify the law. Many mining plans

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<sup>10/</sup> Section 101(c) of the Act authorizes the Secretary to modify the application of any mandatory safety standard upon petition of the operator or the representative of miners subject to certain conditions.